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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,802	10/09/2001	George H. Small	104410-100	6750
28765	7590	03/01/2006	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006				PHILOGENE, PEDRO
		ART UNIT		PAPER NUMBER
				3733

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/972,802	SMALL, GEORGE H.	
	Examiner Pedro Philogene	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-25,29 and 31-33 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-25,29,31 and 32 is/are rejected.
- 7) Claim(s) 33 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29,31-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 29, line 8, the term "the depth" lacks prior antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29, 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds et al. (5,938,666).

With respect to claim 29, Reynolds et al disclose an umbilical cod clamp (10) comprising a pair of arms (11,12,31,32) each having a length in a generally V-shaped configuration having rear end portions joined together at an apex thereof and having free forward end portions normally disposed in spaced apart relation; as best seen in FIG.1, and being movable towards each other for clamping an umbilical cord between the arms; a channel (21,22) that extends substantially along the length of at least one arm and is open at the free end portion thereof to facilitate the escape of fluid therefrom when the clamp is closed; as set forth in column 4, lines 32-58; and wherein the depth

of the channel increases toward each open end; as best seen in Fig.1, (where the incline of the channel 22 increases the depth toward the open end), and a locking portion (15,16,35,36) for securing the arms together when the clamp is closed; as best seen in Fig.2.

With respect to claims 31-32, Reynolds discloses all the limitations, as best seen in FIG.1. The channel has a width that is 1/3 of the width of each arm, the channel is present in each arm (21,22) and is open at the free end.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merritt (5,006,830) in view of Dorsey (6,132,447).

With respect to claims 17-25, it is noted that Merritt teaches all the limitations, except for an identification means comprising a gender-identifying color associated with portion of the clamp to facilitate identification of the gender of the baby; as claimed by applicant. However, in a similar art, Dorsey evidences the use of a device to provide umbilical devices with gender-identifying color coding (blue for boys and pink for girls) for readily recognizable indicia associated with newborn baby. Inasmuch as one of ordinary skill in the art would recognize that this newborn baby indicia would also be advantageous subsequent to umbilical cord severing, it would have been obvious to

similarly form the Merritt clamp with such color-coding. Whether the entire clamp is formed of blue or pink or a portion remains a neutral color is clearly a matter of personal preference with no criticality having been advanced for either choice.

***Allowable Subject Matter***

Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

The Affidavit under 37 CFR 1.132 filed 2/11/05 is insufficient to overcome the rejection of claims 17-25 based upon Merrit/Dorsey as set forth in the last Office action because: In paragraph 11 of the affidavit filed 2/11/05 applicant shows no evidence of Long-Felt Need. It states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem. See MPEP § 716.04.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Applicant's arguments that the webs (21,22) are parallel to and preferably co-planar to the root plane of opposite serrated surfaces, thus Reynolds clearly fails to

disclose a remotely suggest an umbilical cord clamp structure where the channel depth increased toward each open end. The examiner begs to differ, because Reynolds also stated that the webs could also be as close as possible to co-planar, but not necessarily so. And as can best be seen in FIG. 1, the web 22 forming the channel is slanted, therefore the depth increases toward the open end.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Merritt teaches of an umbilical clamp with a color coded identification mark and Dorsey teaches of an umbilical scissor with color coded to identify the gender of the infant. Therefore, given the teaching Dorsey, it would have been obvious modify the clamp of Merritt, as taught by Dorsey to arrive at he clamp as claimed by applicant. Furthermore, applicant stated that the clamp remains on the baby's cord stump, applicant 's attention is directed to Merritt column 3, lines 54-63 where Merritt discloses that the clamp remains attached to the baby's cord stump.

Furthermore, Merritt discloses a color code for identifying the baby with a person responsible for removing the baby from the facility, which color code stays with the baby for period of time. Thus, a color-coded identification is established. Dorsey discloses a

device with a plurality of indicia comprising a plurality of birth-related data, such as a baby's gender (blue for boy and pink for girl), thereby a color-coding identification is established. Therefore, combining the teaching of Dorsey with the teaching Merritt to arrive at applicant device would have been obvious to one of ordinary skill in the art at the time of the invention.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene  
February 23, 2006

  
PEDRO PHILOGENE  
PRIMARY EXAMINER